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VIA EMAIL—UNDER SEAL

Honorable Gregory H. Woods
United States District Judge
United States District Court
500 Pearl Street
New York, NY 10007

Re: *United States v. Grant and Reichberg*, 16-cr-468 (GHW)

Dear Judge Woods:

We write to respectfully address part of our planned cross of Jona Rechnitz tomorrow, as well as to provide the Court and U.S. Attorney's Office additional defense exhibits. Like our previous letters, we ask that the Court maintain this letter under seal until Rechnitz has completed his cross.

During his direct testimony, Rechnitz testified about numerous tickets that were either "fixed," or attempted to be fixed, by the co-conspirators. Nov. 11, 2018, Tr. 2669–86. We were surprised by this testimony on alleged ticket fixing, as only one of the eighteen official acts in the government's amended Bill of Particulars was about "ticket fixing," and, even then, it was only one ticket. *See* BOP, Dkt. # 238, p. 2. Additionally, we had believed that the government had concluded, based on Rechnitz's statements in his 3500 material, that the tickets were taken care of by lawyers Mr. Reichberg hired, and that Mr. Reichberg then "up charged" his clients. *See, e.g.*, 3501-29, p.17; 3501-180 ("JSR friend, tickets, jury duty – Jeremy took care of. Through lawyer ... Jeremy had lawyer who dealt w/ this for him like anyone would do/could do"). We therefore did not expect the government to elicit substantial testimony about "ticket fixing." As such, we did not intend to introduce DMV documents in our cross-examination of Rechnitz.

Contrary to the 3500 material and our expectation, however, Rechnitz testified on his direct examination that Mr. Reichberg "fixed" tickets and got points removed from licenses. Tr. 2669-2671. Moreover, even though the BOP listed only one ticket which was allegedly "fixed," the government introduced evidence about five other tickets (about which no notice was given) which were allegedly "fixed" or attempted to be "fixed."

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Given this direct testimony, we now plan on crossing Rechnitz about these tickets and proving that they were not, in fact, “fixed.” We will introduce DMV records to prove that the recipients of these tickets were found guilty on each of these tickets, and, on many, points were imposed on their licenses. We have attached certain DMV records (JR 60003–4; 60010–11; 60021; 60023–24; 60026; 60029–30; 60033–36; 60044–45; 60051; 60057), that we plan on introducing during Rechnitz’s cross. These DMV records are both self-authenticating and admissible pursuant to a hearsay exception.¹

The DMV records we plan on introducing, *e.g.*, JR 6004,² are all self-authenticating under F.R.E. 902(1). First, they bear the seal of the State of New York. *See* 902(1)(A). Second, they are certified as “true and complete cop[ies]” by the Executive Deputy Commissioner of Motor Vehicles. *See* 902(1)(B). This certification qualifies as a 902(1)(B) attestation. *See United States v. Ventura-Melendez*, 275 F.3d 9, 14 (1st Cir. 2001) (holding that “although LC Pagan did not use the precise term ‘attest,’ he stated that he ‘certifies and swears’ that the contents of the CNER are accurate,” and that “easily supports the requirement of Rule 902(1) that the signature purport to be an attestation”) (internal quotation marks and brackets omitted). *See also United States v. Kuzmenko*, No. 2:12-cr-00062 JAM, 2014 U.S. Dist. LEXIS 47017, at *7 (E.D. Cal. Apr. 2, 2014) (“Provided that the ‘DMV license printout’ bears the seal of the State of California as well as a signature purporting to be an execution or attestation, the evidence is self-authenticating under FRE 902(1) and the Government need not call a custodian-witness to lay foundation for this evidence.”). In addition, these records are self-authenticating under F.R.E. 804(4).

As to hearsay, these records are admissible both as business records, under F.R.E. 803(6), and as public records, pursuant to F.R.E. 803(8). In fact, all these records bear a note that says: “This is to certify that this document is a true and complete copy of a record on file in the New York State Department of Motor Vehicles, Albany, New York.” Others, *e.g.*, JR 60003, in addition to the above-mentioned certification, also provide that:

“The record was made in regular course of New York Department of Motor Vehicles daily business. It is the business of the New York State Department of Motor Vehicles to create and maintain the records of drivers in the state of New York. Entries in this document are made at

¹ Certain other ticket-related documents, such as original tickets, are not self-authenticating but we will lay a foundation for their introduction through Rechnitz’s testimony.

² In some of the original documents, the seal is on the back of the two-sided DMV record. In the copies of those documents provided to the Court, we have provided the back pages bearing the seal and attestation behind the front pages.

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the time the recorded transactions or events took place or within a reasonable time thereafter. The person who reports the information is under business duty to do so accurately.”

Id. Cf. Kuzmenko, 2014 U.S. Dist. LEXIS 47017, at *7 (“Drivers’ licenses are admissible under the public records exception to the rule against hearsay, pursuant to FRE 803(8).”).

We did not previously provide these DMV exhibits to the government because we did not believe that the government would elicit testimony from Rechnitz that numerous tickets were “fixed.” Indeed, we assumed that the government had realized, as we had based on our investigation, that the tickets were not fixed. But now that the government has elicited testimony about the alleged “ticket fixing” of specific tickets we are entitled to confront Rechnitz with the DMV records which show the falsity of his statements.

As the DMV records are both self-authenticating and admissible pursuant to a hearsay exception, the Court should admit them into evidence during Rechnitz’s cross.

Respectfully submitted,

By: /s/
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cc: All counsel (via Email)